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2005 WL 743090 (S.D.N.Y.)

(Cite as: 2005 WL 743090 (S.D.N.Y.))

Motions, Pleadings and Filings

Only the Westlaw citation is currently available.

United States District Court,
S.D. New York.
Jorge Marcelo MAZZINI, et al., Plaintiffs,
v.
THE REPUBLIC OF ARGENTINA, Defendant.
No. 03 Civ. 8120TPG.

March 31, 2005.

OPINION

GRIESA, J.

INTRODUCTION

*1 Plaintiffs in this case are owners of certain bonds issued by defendant The Republic of Argentina. The Republic defaulted on its bonds in December of 2001 during a profound fiscal crisis. Plaintiffs are suing to recover amounts due to them by virtue of the default and have moved for summary judgment. The Republic opposes the motion asserting various defenses. Plaintiffs also have moved to strike certain discovery requests made by the Republic.

Plaintiffs' motion for summary judgment on the bond obligations is granted in part and denied in part. Plaintiffs' motion to strike certain discovery requests is granted.

FACTS*The Bonds and the Default*

Plaintiffs acquired certain bonds issued by the Republic. The bonds are governed by agreements that set forth the rights and obligations of the debtor and the creditor, including provisions governing

terms of repayment, events of default, acceleration of defaulted loans, waivers of immunity, and forum selection. Some of the bonds at issue are governed by a Fiscal Agency Agreement between the Republic of Argentina and Bankers Trust Company, dated October 19, 1994 (the "1994 FAA"). Others of the bonds at issue are governed by a Fiscal Agency Agreement between the Republic of Argentina and Bankers Trust Company, dated December 10, 1993 (the "1993 FAA"). Finally, some of the bonds at issue are so-called Brady-Bonds, which are governed by a document entitled Floating Rate Bond Exchange Agreement, Dated as of December 6, 1992, Implementing Part I of the Republic of Argentina 1992 Financing Plan, Citibank, N.A., as Closing Agent (the "FRB Agreement").

On December 24, 2001, the Republic declared a moratorium on payments of principal and interest on the external debt of the Republic. Plaintiffs brought this lawsuit for recovery of unpaid interest and claiming the right to accelerate payment of principal.

The 1994 Fiscal Agency Agreement

The 1994 FAA is the same agreement that governed the bonds on which this court granted summary judgment to the plaintiffs in *Lightwater Corporation Ltd. v. The Republic of Argentina*, 02 Civ. 3804(TPG), 2003 WL 1878420 (S.D.N.Y. April 14, 2003). Section 22 of the 1994 FAA states that the Republic waives sovereign immunity and consents to jurisdiction in any state or federal court in the Borough of Manhattan in the City of New York. The 1994 FAA provides that failure to make any payment of principal or interest for 30 days after the applicable payment date constitutes an event of default. A declaration by the Republic of a moratorium on the payment of principal or interest on its public external indebtedness is also an event of default. Upon an event of default, a bondholder

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is entitled to give notice declaring the principal amount of the bonds held by it immediately due and payable.

The 1993 Fiscal Agency Agreement

The 1993 FAA is a similar agreement to the 1994 FAA. Section 20 of the 1993 FAA states that the Republic waives sovereign immunity and consents to jurisdiction in any state or federal court in the City of New York. Section 4 provides that the bonds "will be substantially in the form attached hereto as Exhibit 1." Exhibit 1 to the 1993 FAA provides that failure to make any payment of principal or interest for 30 days after the applicable payment date constitutes an event of default. A declaration by the Republic of a moratorium on the payment of principal or interest on its public external indebtedness is also an event of default. Upon an event of default of the type described above, a bondholder is entitled to give notice declaring the principal amount of the bonds held by it immediately due and payable.

The Floating Rate Bond Exchange Agreement

*2 Section 6.07(a) of the FRB states that the Republic consents to jurisdiction in any state or federal court sitting in New York City. Section 6.07(d) of the FRB includes an irrevocable waiver by the Republic of its sovereign immunity. Section 9 of Exhibit 1A to the FRB, the Form of the Bearer Floating Rate Bond, and Section 9 of Exhibit 1B to the FRB, the Form of the Registered Floating Rate Bond, provide that failure to pay interest within 30 days after the applicable due date constitutes an event of default. A declaration by the Republic of a moratorium on the payment of principal or interest on its public external indebtedness also constitutes an event of default. Upon a continuing event of default, holders of 25% or more in aggregate outstanding principal amount of the bonds may declare the unpaid principal immediately due by written demand.

The Specific Bonds at Issue

The bonds that are the subject of this action are

listed below. Where adequate information has been provided by plaintiffs, the tables list each bond's beneficial owner(s), face value, CUSIP No. and/or ISIN No. and/or BB No., date of issuance, date of maturity, interest rate and interest payment schedule, date of purchase, notice of acceleration, contract documents and proof of ownership. The information contained in the following tables is drawn from Plaintiffs' Declarations and from the Supplemental Declarations of Plaintiffs in Further Support of Motion for Summary Judgment.

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Table 1.

| | |
|--|---|
| Plaintiff Bond Holder or Beneficial Owner: | Ezequiel Hernan Baclini and Patricia Ruth Caronna |
|--|---|

| | |
|-------------|-----------------|
| Face Value: | U.S. \$ 180,000 |
|-------------|-----------------|

| | |
|------------------------------|---|
| CUSIP No., ISIN No., BB No.: | CUSIP No. 040114AH34; ISIN No. US040114AH34 |
|------------------------------|---|

| | |
|-------------------|------------|
| Date Of Issuance: | Not given. |
|-------------------|------------|

| | |
|-------------------|--------------------|
| Date Of Maturity: | December 20, 2003. |
|-------------------|--------------------|

| | |
|------------------------|---------|
| Interest Rate/Payable: | 8.375 % |
|------------------------|---------|

| | |
|-------------------|--------------------------------|
| Date Of Purchase: | On or about December 20, 1993. |
|-------------------|--------------------------------|

| | |
|---------------|-------------------------------|
| Acceleration: | Notice sent January 22, 2004. |
|---------------|-------------------------------|

| | |
|--|-----------|
| Contract Documents: (FAA; Indenture; Offering Prospectus; Certificates, etc.) | 1993 FAA. |
|--|-----------|

| | |
|---|---|
| Evidence of Ownership Proffered: (Account Statements; Letters; Notarized Statements, etc.) | Account statement from HSBC listing bonds in the above amount with the above given CUSIP No. as held in an account belonging to Ezequiel Hernan Baclini and Patricia Ruth Caronna |
|---|---|

Table 2.

| | |
|--|---|
| Plaintiff Bond Holder or Beneficial Owner: | Ana Valeria Baravalle and Pablo Alejandro Baravalle |
|--|---|

| | |
|-------------|----------------|
| Face Value: | U.S. \$ 61,000 |
|-------------|----------------|

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| | |
|--|--|
| CUSIP No., ISIN No., BB No.: | CUSIP No. 040114AN0; ISIN No. US040114AN02 |
| ----- | |
| Date Of Issuance: | Not given. |
| ----- | |
| Date Of Maturity: | October 9, 2006. |
| ----- | |
| Interest Rate/Payable: | 11% |
| ----- | |
| Date Of Purchase: | On or about January 3 and January 4, 2001 |
| ----- | |
| Acceleration: | Notice sent October 3, 2003. |
| ----- | |
| Contract Documents: (FAA; Indenture; Offering Prospectus; Certificates, etc.) | 1994 FAA. |
| ----- | |
| Evidence of Ownership Proffered: (Account Statements; Letters; Notarized Statements, etc.) | Certificate from Caja De Valores listing bonds in the above amount as held on account for Ana Valeria Baravalle and Pablo Alejandro Baravalle. |
| ----- | |

Table 3.

| | |
|---|---|
| Plaintiff Bond Holder or Beneficial Owner: | Enrique Cohen, Estella Bety Rosas de Cohen, and Debora Reina Cohen |
| ----- | |
| Face Value: | U.S. \$ 75,000 |
| ----- | |
| CUSIP No., ISIN No., BB No.: | CUSIP No. 040114AZ3; ISIN No. US040114AZ32 |
| ----- | |
| Date Of Issuance: | Not given. |
| ----- | |
| Date Of Maturity: | December 4, 2005. |
| ----- | |
| Interest Rate/Payable: | 11 % |
| ----- | |
| Date Of Purchase: | On or about August 12, 2001. |

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Acceleration: Notice sent October 3, 2003.

Contract Documents: 1994 FAA.
(FAA; Indenture; Offering
Prospectus; Certificates,
etc.)

Evidence of Ownership Account statement from Citibank listing bonds
Proffered: in the above amount in a brokerage account
(Account Statements; belonging to Enrique Cohen, Estrella Bety Rosas
Letters; Notarized De Cohen, and Debora Reina Cohen.
Statements, etc.)

Table 4.

Plaintiff Bond Holder or Guillermo Jorge Domato
Beneficial Owner:

Face Value: U.S. \$ 165,000

CUSIP No., ISIN No., BB CUSIP No. 040114AR1; ISIN No. US040114AR16
No.:

Date Of Issuance: January 30, 1997.

Date Of Maturity: January 30, 2017.

Interest Rate/Payable: 11.375 %

Date Of Purchase: On or about June 21 and August 9, 2000.

Acceleration: Notice sent October 8, 2003.

Contract Documents: 1994 FAA.
(FAA; Indenture; Offering
Prospectus; Certificates,
etc.)

Evidence of Ownership Account statement from B.P. Alpha listing
Proffered: bonds in the above amount with the above date of

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| | |
|---|---|
| (Account Statements; Letters; Notarized Statements, etc.) | issuance, date of maturity, and interest rate in a brokerage account belonging to Guillermo Jorge Donato. |
|---|---|

Table 5.

| | |
|--|--|
| Plaintiff Bond Holder or Beneficial Owner: | Maria Del Carmen Escudero |
| Face Value: | U.S. \$ 34,000 |
| CUSIP No., ISIN No., BB No.: | CUSIP No. 040114AR1; ISIN No. US040114AR16 |
| Date Of Issuance: | Not given. |
| Date Of Maturity: | January 30, 2017. |
| Interest Rate/Payable: | 11.375 % |
| Date Of Purchase: | On or about August 2, 2001. |
| Acceleration: | Notice sent October 3, 2003. |
| Contract Documents: (FAA; Indenture; Offering Prospectus; Certificates, etc.) | 1994 FAA. |
| Evidence of Ownership Proffered: (Account Statements; Letters; Notarized Statements, etc.) | Certificate from Caja De Valores listing bonds in the above amount as held on account for Maria Del Carmen Escudero. |

Table 6.

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 Plaintiff Bond Holder or Susana Frasca
 Beneficial Owner:

 Face Value: U.S. \$ 110,000

CUSIP No., ISIN No., BB CUSIP No. 040114AR1; ISIN No. US040114AR16
 No.:

 Date Of Issuance: Not given.

Date Of Maturity: January 30, 2017.

Interest Rate/Payable: 11.375 %

Date Of Purchase: On or about August 4, 2000.

Acceleration: Notice sent October 3, 2003.

Contract Documents: 1994 FAA.
 (FAA; Indenture; Offering
 Prospectus; Certificates,
 etc.)

Evidence of Ownership Certificate from Caja De Valores listing bonds in
 Proffered: the above amount as held on account for Susana
 (Account Statements; Frasca.
 Letters; Notarized
 Statements, etc.)

Table 7.

 Plaintiff Bond Holder or Imperial Bylidol S.A.
 Beneficial Owner:

 Face Value: U.S. \$ 500,000

CUSIP No., ISIN No., BB CUSIP No. 040114GG9; ISIN No. US040114GG96
 No.:

 Date Of Issuance: Not given.

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| | |
|---|--|
| ----- | |
| Date Of Maturity: | June 19, 2018. |
| ----- | |
| Interest Rate/Payable: | 12.25 % |
| ----- | |
| Date Of Purchase: | On or about April 2, April 4, May 12, and May 19, 2003. |
| ----- | |
| Acceleration: | Notice sent October 8, 2003. |
| ----- | |
| Contract Documents: | 1994 FAA. |
| (FAA; Indenture; Offering Prospectus; Certificates, etc.) | |
| ----- | |
| Evidence of Ownership Proffered: | --Account statement from Merrill Lynch listing bonds in the above amount in an account belonging to Imperial Bylidol S.A.. |
| (Account Statements; Letters; Notarized Statements, etc.) | |
| ----- | |

Table 8.

| | |
|--|--|
| ----- | |
| Plaintiff Bond Holder or Beneficial Owner: | Luigi Giacomazzi and Luciana Pedrolli |
| ----- | |
| Face Value: | U.S. \$ 1,600,000 |
| ----- | |
| CUSIP No., ISIN No., BB No.: | CUSIP No. 040114FC9; ISIN No. US040114FC91 |
| ----- | |
| Date Of Issuance: | Not given. |
| ----- | |
| Date Of Maturity: | Not given. |
| ----- | |
| Interest Rate/Payable: | 11.375 % |
| ----- | |
| Date Of Purchase: | On or about July 13 and July 17, 2001. |
| ----- | |
| Acceleration: | Notice sent October 8, 2003. |
| ----- | |

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 Contract Documents: 1994 FAA.
 (FAA; Indenture; Offering
 Prospectus; Certificates,
 etc.)

 Evidence of Ownership --Account statement from Banca del Garda listing
 Proffered: bonds in the above amount with the above given
 (Account Statements; ISIN No. as held on account for Luigi Giacomazzi
 Letters; Notarized and Luciana Pedrolli.
 Statements, etc.)

Table 9.

 Plaintiff Bond Holder or Patrizia Giacomazzi and Michele Stagnitto

Beneficial Owner:

 Face Value: U.S. \$ 128,000

CUSIP No., ISIN No., BB CUSIP No. 040114FC9; ISIN No. US040114FC91
 No.:

 Date Of Issuance: Not given.

Date Of Maturity: Not given.

Interest Rate/Payable: 11.375 %

Date Of Purchase: On or about July 24 and August 2, 2001.

Acceleration: Notice sent October 8, 2003.

Contract Documents: 1994 FAA.
 (FAA; Indenture; Offering
 Prospectus; Certificates,
 etc.)

 Evidence of Ownership --Account statement from Banca del Garda listing
 Proffered: bonds in the above amount with the above given
 (Account Statements; ISIN No. as held on account for Patrizia
 Letters; Notarized Giacomazzi and Michele Stagnitto.

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Statements, etc.)

Table 10.

| | |
|---|---|
| Plaintiff Bond Holder or Beneficial Owner: | Norberto Pablo Giudice |
| Face Value: | U.S. \$ 27,000 |
| CUSIP No., ISIN No., BB No.: | CUSIP No. 040114AR1; ISIN No. US040114AR16 |
| Date Of Issuance: | Not given. |
| Date Of Maturity: | January 20, 2017. |
| Interest Rate/Payable: | 11.375 % |
| Date Of Purchase: | On or about June 29, August 6, and August 8, 2001. |
| Acceleration: | Notice sent October 3, 2003. |
| Contract Documents: (FAA; Indenture; Offering Prospectus; Certificates, etc.) | 1994 FAA. |
| Evidence of Ownership Proffered: (Account Statements; Letters; Notarized Statements, etc.) | --Certificate from Caja De Valores listing bonds in the above amount as held on account for Norberto Pablo Giudice. |

Table 11.

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 Plaintiff Bond Holder or Alberto Haber
 Beneficial Owner:

Face Value: U.S. \$ 302,400

CUSIP No., ISIN No., BB CUSIP No. P04981CF4; ISIN No. XS0043120236
 No.:

Date Of Issuance: March 31, 1993.

Date Of Maturity: March 29, 2005.

Interest Rate/Payable: Not given.

Date Of Purchase: In or around September 2002.

Acceleration: None.

Contract Documents: FRB dated December 6, 1992.
 (FAA; Indenture; Offering
 Prospectus; Certificates,
 etc.)

Evidence of Ownership --Asset statement from UBS listing bonds in the
 Proffered: above amount with the above given ISIN No. as
 (Account Statements; held in an account belonging to Alberto Haber.
 Letters; Notarized
 Statements, etc.)

Table 12.

 Plaintiff Bond Holder or Jose Alberto Landi
 Beneficial Owner:

Face Value: U.S. \$ 115,000

CUSIP No., ISIN No., BB CUSIP No. 040114AR1; ISIN No. US040114AR16
 No.:

Date Of Issuance: Not given.

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| | |
|---------------------------|--|
| ----- | |
| Date Of Maturity: | January 30, 2017. |
| ----- | |
| Interest Rate/Payable: | 11.375 % |
| ----- | |
| Date Of Purchase: | In or around 2000. |
| ----- | |
| Acceleration: | Notice sent October 3, 2003. |
| ----- | |
| Contract Documents: | 1994 FAA. |
| (FAA; Indenture; Offering | |
| Prospectus; Certificates, | |
| etc.) | |
| ----- | |
| Evidence of Ownership | --Account statement from Caja de Valores listing |
| Proffered: | bonds in the above amount with the above given |
| (Account Statements; | ISIN No. as held in an account for Jose Alberto |
| Letters; Notarized | Landi. |
| Statements, etc.) | |
| ----- | |

Table 13.

| | |
|--------------------------|--|
| ----- | |
| Plaintiff Bond Holder or | Susana Lauria and Guillermo Dotto |
| Beneficial Owner: | |
| ----- | |
| Face Value: | U.S. \$ 41,000 |
| ----- | |
| CUSIP No., ISIN No., BB | CUSIP No. 040114AR1; ISIN No. US040114AR16 |
| No.: | |
| ----- | |
| Date Of Issuance: | Not given. |
| ----- | |
| Date Of Maturity: | January 30, 2017. |
| ----- | |
| Interest Rate/Payable: | 11.375 % |
| ----- | |
| Date Of Purchase: | On or about July 17 and August 2, 2001. |
| ----- | |
| Acceleration: | Notice sent October 3, 2003. |
| ----- | |
| Contract Documents: | 1994 FAA. |

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(FAA; Indenture; Offering
Prospectus; Certificates,
etc.)

| | |
|--|--|
| Evidence of Ownership Proffered: (Account Statements; Letters; Notarized Statements, etc.) | Certificate from Caja De Valores listing bonds in the above amount as held on account for Guillermo Dotto and Susana Lauria. |
|--|--|

Table 14.

| | |
|--|--|
| Plaintiff Bond Holder or Beneficial Owner: | Corbins Trade S.A. |
| Face Value: | U.S. \$ 1,130,000 |
| CUSIP No., ISIN No., BB No.: | CUSIP No. 040114AR1; ISIN No. US040114AR16 |
| Date Of Issuance: | Not given. |
| Date Of Maturity: | January 30, 2017. |
| Interest Rate/Payable: | 11.375 % |
| Date Of Purchase: | In or around August 2003. |
| Acceleration: | Notice sent October 3, 2003. |
| Contract Documents: (FAA; Indenture; Offering Prospectus; Certificates, etc.) | 1994 FAA. |
| Evidence of Ownership Proffered: (Account Statements; Letters; Notarized Statements, etc.) | Account statement from Credit Lyonnais (Suisse) S.A.. |

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Table 15.

| | |
|---|---|
| Plaintiff Bond Holder or Beneficial Owner: | Corbins Trade S.A. |
| Face Value: | U.S. \$ 480,000 |
| CUSIP No., ISIN No., BB No.: | CUSIP No. 040114AV2; ISIN No. US040114AV28 |
| Date Of Issuance: | Not given. |
| Date Of Maturity: | September 19, 2027. |
| Interest Rate/Payable: | 9.75 % |
| Date Of Purchase: | In or around August 2003. |
| Acceleration: | Notice sent October 3, 2003. |
| Contract Documents: (FAA; Indenture; Offering Prospectus; Certificates, etc.) | 1994 FAA. |
| Evidence of Ownership Proffered: (Account Statements; Letters; Notarized Statements, etc.) | Account statement from Credit Lyonnais (Suisse) S.A.. |

Table 16.

| | |
|--|--------------------------------------|
| Plaintiff Bond Holder or Beneficial Owner: | Hugo Masini and Viviana Noemi Touron |
| Face Value: | U.S. \$ 105,000 |

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 CUSIP No., ISIN No., BB CUSIP No. 040114AZ3; ISIN No. US040114AZ32

No.:

Date Of Issuance: Not given.

Date Of Maturity: December 4, 2005.

Interest Rate/Payable: 11 %

Date Of Purchase: In or around March 2001.

Acceleration: Notice sent October 8, 2003.

Contract Documents: 1994 FAA.
 (FAA; Indenture; Offering
 Prospectus; Certificates,
 etc.)

Evidence of Ownership Account statement from Citibank listing bonds
 Proffered: in the above amount in an account belonging to
 (Account Statements; Hugo Masini and Viviana N Tournon.
 Letters; Notarized

Statements, etc.)

Table 17.

 Plaintiff Bond Holder or Paula Mastronardi
 Beneficial Owner:

Face Value: U.S. \$ 100,000

CUSIP No., ISIN No., BB CUSIP No. 040114AN0; ISIN No. US040114AN02
 No.:

Date Of Issuance: Not given.

Date Of Maturity: October 9, 2006.

Interest Rate/Payable: 11 %

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| | |
|--|--|
| Date Of Purchase: | Not given. |
| Acceleration: | Notice sent October 14, 2003. |
| Contract Documents: (FAA; Indenture; Offering Prospectus; Certificates, etc.) | 1994 FAA. |
| Evidence of Ownership Proffered: (Account Statements; Letters; Notarized Statements, etc.) | Account statement from B.P. Alpha listing bonds in the above amount with the above given CUSIP No. in a portfolio belonging to Paula Mastronardi. |

Table 18.

| | |
|--|--|
| Plaintiff Bond Holder or Beneficial Owner: | Paula Mastronardi |
| Face Value: | U.S. \$ 454,000 |
| CUSIP No., ISIN No., BB No.: | CUSIP No. 040114AR1; ISIN No. US040114AR16 |
| Date Of Issuance: | Not given. |
| Date Of Maturity: | January 30, 2017. |
| Interest Rate/Payable: | 11.375 % |
| Date Of Purchase: | Not given. |
| Acceleration: | Notice sent October 14, 2003. |
| Contract Documents: (FAA; Indenture; Offering Prospectus; Certificates, etc.) | 1994 FAA. |

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| | |
|--|--|
| Evidence of Ownership Proffered: (Account Statements; Letters; Notarized Statements, etc.) | Account statement from B.P. Alpha listing bonds in the above amount with the above given CUSIP No. in a portfolio belonging to Paula Mastronardi. |
|--|--|

Table 19.

| | |
|--|---|
| Plaintiff Bond Holder or Beneficial Owner: | Claudio Miguel Matheou |
| Face Value: | U.S. \$ 80,000 |
| CUSIP No., ISIN No., BB No.: | CUSIP No. 040114GF1; ISIN No. US040114GF14 |
| Date Of Issuance: | Not given. |
| Date Of Maturity: | December 19, 2008. |
| Interest Rate/Payable: | Not given. |
| Date Of Purchase: | In or around July 2001. |
| Acceleration: | Notice sent October 8, 2003. |
| Contract Documents: (FAA; Indenture; Offering Prospectus; Certificates, etc.) | 1994 FAA. |
| Evidence of Ownership Proffered: (Account Statements; Letters; Notarized Statements, etc.) | Account statement from Merrill Lynch listing bonds in the above amount in an account belonging to Claudio Miguel Matheou. |

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| | |
|---|--|
| Plaintiff Bond Holder or Beneficial Owner: | Jorge Marcelo Mazzini and Graciela Alejandra Chersicla |
| Face Value: | U.S. \$ 239,000 |
| CUSIP No., ISIN No., BB No.: | CUSIP No. 040114AR1; ISIN No. US040114AR16 |
| Date Of Issuance: | Not given. |
| Date Of Maturity: | January 30, 2017. |
| Interest Rate/Payable: | 11.375 % |
| Date Of Purchase: | On or about August 10 and August 31, 2000. |
| Acceleration: | Notice sent October 3, 2003. |
| Contract Documents: (FAA; Indenture; Offering Prospectus; Certificates, etc.) | 1994 FAA. |
| Evidence of Ownership Proffered: (Account Statements; Letters; Notarized Statements, etc.) | Certificate from Caja De Valores listing bonds in the above amount as held on account for Jorge Marcelo Mazzini and Graciela Alejandra Chersicla. |

Table 21.

| | |
|--|--|
| Plaintiff Bond Holder or Beneficial Owner: | Dario Alberto Pardal |
| Face Value: | U.S. \$ 150,000 |
| CUSIP No., ISIN No., BB No.: | CUSIP No. 040114AH3; ISIN No. US040114AH34 |

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| | |
|---------------------------|--|
| ----- | |
| Date Of Issuance: | Not given. |
| ----- | |
| Date Of Maturity: | December 20, 2003. |
| ----- | |
| Interest Rate/Payable: | 8.375 % |
| ----- | |
| Date Of Purchase: | On or about August 3, 2000. |
| ----- | |
| Acceleration: | Notice sent January 22, 2004. |
| ----- | |
| Contract Documents: | 1993 FAA. |
| (FAA; Indenture; Offering | |
| Prospectus; Certificates, | |
| etc.) | |
| ----- | |
| Evidence of Ownership | Account statement from Merrill Lynch listing |
| Proffered: | bonds in the above amount in an account |
| (Account Statements; | belonging to Dario Alberto Pardal. |
| Letters; Notarized | |
| Statements, etc.) | |
| ----- | |

Table 22.

| | |
|--------------------------|--|
| ----- | |
| Plaintiff Bond Holder or | Dario Alberto Pardal |
| Beneficial Owner: | |
| ----- | |
| Face Value: | U.S. \$ 250,000 |
| ----- | |
| CUSIP No., ISIN No., BB | CUSIP No. 040114AZ3; ISIN No. US040114AZ32 |
| No.: | |
| ----- | |
| Date Of Issuance: | Not given. |
| ----- | |
| Date Of Maturity: | December 4, 2005. |
| ----- | |
| Interest Rate/Payable: | 11 % |
| ----- | |
| Date Of Purchase: | On or about August 3, 2000. |
| ----- | |
| Acceleration: | Notice sent October 14, 2003. |
| ----- | |

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 Contract Documents: 1994 FAA.
 (FAA; Indenture; Offering
 Prospectus; Certificates,
 etc.)

Evidence of Ownership Account statement from Merrill Lynch listing
 Proffered: bonds in the above amount in an account
 (Account Statements; belonging to Dario Alberto Pardal.
 Letters; Notarized

Statements, etc.)

Table 23.

 Plaintiff Bond Holder or Dario Alberto Pardal
 Beneficial Owner:

Face Value: U.S. \$ 100,000

CUSIP No., ISIN No., BB CUSIP No. 040114AN0; ISIN No. US040114AN02
 No.:

Date Of Issuance: Not given.

Date Of Maturity: October 9, 2006.

Interest Rate/Payable: 11 %

Date Of Purchase: On or about April 12, 1999.

Acceleration: Notice sent October 14, 2003.

Contract Documents: 1994 FAA.
 (FAA; Indenture; Offering
 Prospectus; Certificates,
 etc.)

Evidence of Ownership Account statement from Merrill Lynch listing
 Proffered: bonds in the above amount in an account
 (Account Statements; belonging to Dario Alberto Pardal.
 Letters; Notarized

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Statements, etc.)

Table 24.

| | |
|--|---|
| Plaintiff Bond Holder or Beneficial Owner: | Kinburg Trust S.A. |
| Face Value: | U.S. \$ 789,000 |
| CUSIP No., ISIN No., BB No.: | CUSIP No. 040114AH3; ISIN No. US040114AH34 |
| Date Of Issuance: | Not given. |
| Date Of Maturity: | December 20, 2003. |
| Interest Rate/Payable: | 8.375 %. |
| Date Of Purchase: | Not given. |
| Acceleration: | Notice sent January 22, 2004. |
| Contract Documents: (FAA; Indenture; Offering Prospectus; Certificates, etc.) | 1993 FAA. |
| Evidence of Ownership Proffered: (Account Statements; Letters; Notarized Statements, etc.) | Account statement from Bank Boston listing bonds in the above amount as held in an account belonging to Kinburg Trust S.A.. |

Table 25.

| | |
|--------------------------|------------------|
| Plaintiff Bond Holder or | Valerio Piacenza |
|--------------------------|------------------|

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Beneficial Owner:

 Face Value: U.S. \$ 65,000

CUSIP No., ISIN No., BB CUSIP No. 040114AZ3; ISIN No. US040114AZ32

No.:

 Date Of Issuance: Not given.

Date Of Maturity: Not given.

Interest Rate/Payable: 11%

Date Of Purchase: On or about June 13, 2001.

Acceleration: Notice sent October 3, 2003.

Contract Documents: 1994 FAA.
 (FAA; Indenture; Offering
 Prospectus; Certificates,
 etc.)

Evidence of Ownership Account statement from San Paolo IMI S.p.A.
 Proffered: listing bonds in the above amount with the above
 (Account Statements; given ISIN No. as held in an account belonging to
 Letters; Notarized Valerio Piacenza.

Statements, etc.)

Table 26.

 Plaintiff Bond Holder or Compania Calitecno S.A.
 Beneficial Owner:

Face Value: U.S. \$ 105,000

CUSIP No., ISIN No., BB CUSIP No. 040114AZ3; ISIN No. US040114AZ32
 No.:

Date Of Issuance: December 4, 1998.

Date Of Maturity: December 4, 2005.

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Interest Rate/Payable: 11%-----
Date Of Purchase: On or about July 28, 2003.-----
Acceleration: Notice sent October 3, 2003.-----
Contract Documents: 1994 FAA.
(FAA; Indenture; Offering
Prospectus; Certificates,
etc.)-----
Evidence of Ownership Proffered: Position statement from Clariden Bank listing
bonds in the above amount with the above dates
(Account Statements; of issuance and maturity and interest rate as held
Letters; Notarized in an account belonging to Compania Calitecno
Statements, etc.) S.A..

Table 27.

Plaintiff Bond Holder or Beneficial Owner: Juan Jose Rizzo, Claudia Aurora Sabatini Bartra,
and Lidia Julia Mancini-----
Face Value: U.S. \$ 45,000-----
CUSIP No., ISIN No., BB No.: CUSIP No. 040114AH3; ISIN No. US040114AH34-----
Date Of Issuance: Not given.-----
Date Of Maturity: December 20, 2003.-----
Interest Rate/Payable: 8.375%-----
Date Of Purchase: On or about August 16, 2001.-----
Acceleration: Notice sent January 22, 2004.-----
Contract Documents: 1993 FAA.
(FAA; Indenture; Offering

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Prospectus; Certificates,
etc.)

| | |
|--|---|
| Evidence of Ownership Proffered: (Account Statements; Letters; Notarized Statements, etc.) | Account statement from Citibank listing bonds in the above amount in an account belonging to Juan Jose Rizzo, Claudia Sabatini Bartra, and Lidia Julia Mancini |
|--|---|

Table 28.

| | |
|---|--|
| Plaintiff Bond Holder or Beneficial Owner: | Salvador Saddemi, Maria Teresa Lepone, and Sergio Saddemi |
|---|--|

| | |
|-------------|----------------|
| Face Value: | U.S. \$ 90,000 |
|-------------|----------------|

| | |
|-------------------------|--|
| CUSIP No., ISIN No., BB | CUSIP No. 040114AH3; ISIN No. US040114AH34 |
|-------------------------|--|

No.:

| | |
|-------------------|------------|
| Date Of Issuance: | Not given. |
|-------------------|------------|

| | |
|-------------------|-------------------|
| Date Of Maturity: | December 20, 2003 |
|-------------------|-------------------|

| | |
|------------------------|--------|
| Interest Rate/Payable: | 8.375% |
|------------------------|--------|

| | |
|-------------------|----------------------------|
| Date Of Purchase: | On or about June 28, 1996. |
|-------------------|----------------------------|

| | |
|---------------|-------------------------------|
| Acceleration: | Notice sent January 22, 2004. |
|---------------|-------------------------------|

| | |
|--|-----------|
| Contract Documents: (FAA; Indenture; Offering Prospectus; Certificates, etc.) | 1993 FAA. |
|--|-----------|

| | |
|--|--|
| Evidence of Ownership Proffered: (Account Statements; Letters; Notarized Statements, etc.) | Account statement from Citibank listing bonds in the above amount in an account belonging to Salvador Saddemi, Maria T. Lepone, and Sergio Saddemi. |
|--|--|

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Table 29.

| | |
|---|---|
| Plaintiff Bond Holder or Beneficial Owner: | Hernan Taboada |
| Face Value: | U.S. \$ 58,000 |
| CUSIP No., ISIN No., BB No.: | CUSIP No. 040114AR1; ISIN No. US040114AR16 |
| Date Of Issuance: | Not given. |
| Date Of Maturity: | January 30, 2017. |
| Interest Rate/Payable: | 11.375% |
| Date Of Purchase: | On or about August 8, 2001. |
| Acceleration: | Notice sent October 3, 2003. |
| Contract Documents: (FAA; Indenture; Offering Prospectus; Certificates, etc.) | 1994 FAA. |
| Evidence of Ownership Proffered: (Account Statements; Letters; Notarized Statements, etc.) | Certificate from Caja De Valores listing bonds in the above amount as held on account for Hernan Taboada. |

Table 30.

| | |
|--|----------------------|
| Plaintiff Bond Holder or Beneficial Owner: | Jorge Manuel Taboada |
| Face Value: | U.S. \$ 33,000 |

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| | |
|---|---|
| CUSIP No., ISIN No., BB No.: | CUSIP No. 040114AR1; ISIN No. US040114AR16 |
| Date Of Issuance: | Not given. |
| Date Of Maturity: | January 30, 2017. |
| Interest Rate/Payable: | 11.375% |
| Date Of Purchase: | On or about August 8, 2001. |
| Acceleration: | Notice sent October 3, 2003. |
| Contract Documents: (FAA; Indenture; Offering Prospectus; Certificates, etc.) | 1994 FAA. |
| Evidence of Ownership Proffered: (Account Statements; Letters; Notarized Statements, etc.) | Certificate from Caja De Valores listing bonds in the above amount as held on account for Jorge Manuel Taboada. |

Table 31.

| | |
|--|---|
| Plaintiff Bond Holder or Beneficial Owner: | Horacio Alberto Vazquez and Liliana Cebrowski |
| Face Value: | U.S. \$ 40,000 |
| CUSIP No., ISIN No., BB No.: | CUSIP No. 040114AR1; ISIN No. US040114AR16 |
| Date Of Issuance: | Not given. |
| Date Of Maturity: | Not given. |
| Interest Rate/Payable: | Not given. |

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Date Of Purchase: On or about October 27, 2000.

Acceleration: Notice sent October 14, 2003.

Contract Documents: 1994 FAA.
(FAA; Indenture; Offering
Prospectus; Certificates,
etc.)

Evidence of Ownership Proffered: Account statement from MBA Banco de
(Account Statements; Inversiones S.A. listing bonds in the above
Letters; Notarized amount as held in an account belonging to
Horacio Vazquez and Liliana Cebrowski.
Statements, etc.)

Table 32.

Plaintiff Bond Holder or Beneficial Owner: Horacio Alberto Vazquez and Liliana Cebrowski

Face Value: U.S. \$ 33,000

CUSIP No., ISIN No., BB No.: CUSIP No. 040114GA2; ISIN No. US040114GA27

Date Of Issuance: Not given.

Date Of Maturity: Not given.

Interest Rate/Payable: Not given.

Date Of Purchase: On or about October 31, 2000 and February 26, 2001.

Acceleration: Notice sent October 14, 2003.

Contract Documents: 1994 FAA.
(FAA; Indenture; Offering
Prospectus; Certificates,
etc.)

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| | |
|--|---|
| Evidence of Ownership Proffered: (Account Statements; Letters; Notarized Statements, etc.) | Account statement from MBA Banco de Inversiones S.A. listing bonds in the above amount as held in an account belonging to Horacio Vazquez and Liliana Cebrowski. |
|--|---|

Table 33.

| | |
|--|--|
| Plaintiff Bond Holder or Beneficial Owner: | Heinrich Peter Zum Felde |
| Face Value: | U.S. \$ 500,000 |
| CUSIP No., ISIN No., BB No.: | BB No. FRN 00000366; ISIN No. XS004312082-2 |
| Date Of Issuance: | Not given. |
| Date Of Maturity: | Not given. |
| Interest Rate/Payable: | Not given. |
| Date Of Purchase: | Between April 2001 and May 2001. |
| Acceleration: | Not sent. |
| Contract Documents: | FRB dated December 6, 1992. |
| (FAA; Indenture; Offering Prospectus; Certificates, etc.) | |
| Evidence of Ownership Proffered: (Account Statements; Letters; Notarized Statements, etc.) | Photocopy of the above described bond registered in the name of Heinrich Peter Zum Feld. |

DISCUSSION

Standing

*3 Defendant's argument that plaintiffs lack
standing based on the language in the agreements

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governing the bonds is essentially the same as what was rejected in *Latinburg, S.A. v. The Republic of Argentina*, 03 Civ. 8528(TPG), 2004 WL 1152243 (S.D.N.Y. May 24, 2004).

Acceleration of Principal

The Court has already granted summary judgment to the plaintiff bondholders seeking to collect on the Republic's bonds issued under the 1994 FAA in the *Lightwater, supra*, case. The Court wrote in *Lightwater*:

The obligations of the Republic on the bonds involved in these lawsuits are unconditional. Sovereign immunity has been waived. The Republic defaulted on the bonds when it ceased to pay the interest. This would seem to mean that the Republic now owes the three plaintiffs principal and accrued interest.
2003 WL 1878420, at *4.

The Court finds nothing in the record to distinguish the instant case as to this Court's jurisdiction and plaintiffs' unconditional legal right to collect the unpaid interest and to accelerate payment of principal on the bonds issued under the 1994 FAA.

The Court has not yet ruled on the 1993 FAA. However, as described above, the terms of the 1993 FAA are very similar to the terms of the 1994 FAA. The Court therefore will apply its reasoning in *Lightwater*. The Court now holds that it has jurisdiction over claims regarding bonds issued under the 1993 FAA, and that plaintiffs who have given proper notice have the unconditional legal right to collect the unpaid interest and to accelerate payment of principal on the bonds issued under that agreement.

The FRB has not yet been adjudicated. While the Republic's declared moratorium is clearly an event of default under Section 9 of Exhibit 1A to the FRB, plaintiffs have not shown a right to accelerate payment of principal. Plaintiffs do not contend that they are holders of at least 25% of the aggregate outstanding principal amount of the bonds, nor do they contend that repayment of the principal amount of bonds issued under the FRB has been otherwise

accelerated. Therefore, the plaintiffs holding bonds issued under the FRB may claim only unpaid interest on their present motion.

Proof of Ownership

Plaintiffs provide a number of declarations and exhibits to prove their ownership of the bonds. However, the persuasiveness of these materials varies.

Each individual plaintiff, or a representative, provides a declaration asserting ownership of a specific bond or bonds. Declarations which meet the requirements of 28 U.S.C. § 1746 may be substituted for an affidavit on a motion for summary judgment. Local Civil Rule 1.10. 28 U.S.C. § 1746 requires that "substantially the following form" be used when making a declaration outside the United States under penalty of perjury:

"I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".

*4 28 U.S.C. § 1746 (2002). Many of the declarations made by the individual plaintiffs state that "to the best of my knowledge the foregoing is true and correct." This language is not substantially different from the statutory example. The Court considers these declarations to be sufficient.

Each individual plaintiff, or a representative, also provides documents that show the plaintiff's ownership of a bond or bonds. These documents typically take the form of account statements or letters from the plaintiff's bank or broker, usually accompanied by a translated copy. This Court has already decided, in a March 2004 conference covering acceptable proof of ownership in the *Applestein* case, 02 Civ. 4124(TPG), that account statements would generally be accepted as reasonable evidence of plaintiffs' account holdings. This Court will therefore generally rely on account statements provided by each plaintiff in deciding this motion.

This Court will grant summary judgment to plaintiffs who provide (1) evidence of ownership of

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a particular bond, and (2) evidence specifically identifying that bond. In most cases, a properly executed declaration and an account statement will be sufficient to prove that the bonds plaintiffs claim to own are in fact the bonds held in their accounts. Needless to say, the Court will also accept other evidence, so long as it specifically confirms that the bonds held in plaintiffs' accounts are the bonds they claim to own.

Applying the above standards, the Court finds that no issues of material fact remain.

The Republic's Discovery Requests and the Defense of Champerty

The Republic has requested discovery with respect to plaintiffs' proof of ownership. As discussed above, plaintiffs generally have produced sufficient evidence establishing their ownership of the bonds at issue. Further discovery on this issue is not necessary. The Republic also seeks discovery of information relating to the defense of champerty. Section 489 of the New York Judiciary Law prohibits the purchase of bonds for the sole purpose of bringing suit. *See Elliott Assoc. v. Banco de la Nacion*, 194 F.3d 363 (2d Cir.1999). This Court has already considered the issue of discovery in regard to that defense. *See, e.g., Lightwater*, 2003 WL 1878420, at *4; *Applestein*, 2003 WL 1990206, at *4. The Court believes, as it did in those cases, that discovery would not establish any set of facts which would establish a successful champerty defense. The evidence is clear that plaintiffs bought their bonds with the intention of collecting on them, even though they clearly were aware that a lawsuit might be necessary. There was therefore no champerty in violation of Section 489 of the New York Judiciary Law.

CONCLUSION

Plaintiffs' motion for summary judgment is granted in part and denied in part. Plaintiffs' motion for summary judgment is granted as to plaintiffs Ezequiel Hernan Baclini and Patricia Ruth Caronna; Ana Valeria Baravalle and Pablo Alejandro Baravalle; Enrique Cohen, Estella Bety Rosas de Cohen, and Debora Reina Cohen; Guillermo Jorge

Domato; Maria Del Carmen Escudero; Susana Frasca; Imperial Bylidol S.A.; Luigi Giacomazzi and Luciana Pedrolli; Patrizia Giacomazzi and Michele Stagnitto; Norberto Pablo Giudice; Jose Alberto Landi; Susana Lauria and Guillermo Dotto; Corbins Trade, S.A.; Hugo Masini and Viviana Noemi Touron; Paula Mastronardi; Claude Miguel Matheou; Jorge Marcelo Mazzini and Graciela Alejandra Chersicla; Dario Alberto Parda; Kinburg Trust S.A.; Valerio Piacenza; Compania Calitecno, S.A.; Juan Jose Rizzo, Claudia Aurora Sabatini Bartra, and Lidia Julia Mancini; Salvador Saddemi, Maria Teresa Lepone, and Sergio Saddemi; Hernan Taboada; Jorge Manuel Taboada; and, Horacio Alberto Vazquez and Liliana Cebrowski.

*5 Plaintiffs' motion for summary judgment is granted only for payment of past due interest as to plaintiffs Alberto Haber and Heinrich Peter Zum Felde. Plaintiffs' motion for summary judgment as to accelerated principal on the bonds owed by Haber and Zum Felde is denied.

Plaintiffs motion to strike defendant's discovery requests is granted.

Plaintiffs shall submit an appropriate judgment.

SO ORDERED.

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Motions, Pleadings and Filings (Back to top)

- 1:03CV08120 (Docket) (Oct. 15, 2003)

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